

CHAPTER 120  
WORKER RIGHT TO KNOW  
[Prior to 9/24/86, Labor, Bureau of[530]]

**347—120.1(88,89B) Worker right to know.** The provisions of this chapter relate to all employers to the extent not exempted by subrules 347—110.1(2) and 110.1(3) or rule 347—120.8(89B). To the extent an employer is a chemical manufacturer and has information relative to trade secrets, the rules in 347—Chapter 110 are also applicable to employers. The employer's duty shall extend to a person who would normally be deemed an independent contractor, in circumstances where the employer furnishes or specifies that a hazardous chemical shall be used at the workplace. The employer-contractor relationship does not include those situations when a client, patient, customer, or other person obtains professional services from a licensed person on a fee service basis.

**347—120.2(88,89B) Hazard determination.** Procedures for hazard determinations are at rule 347—110.3(88,89B).

**120.2(1)** Employers are not required to evaluate chemicals unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer for the chemical.

**120.2(2)** The written procedures describing the procedures used to determine the hazards of the chemical prepared by the chemical manufacturers, importers, or employers are to be made available, upon request, to employees, their designated representatives, and the commissioner. The written description may be incorporated into the written hazard communication program required under rule 120.3(88,89B).

**347—120.3(88,89B) Written hazard communication program.**

**120.3(1)** Employers shall develop, implement, and maintain a written hazard communication program for their workplaces which at least describes how the criteria specified in rules 347—110.4(88,89B), 110.5(88,89B), and 120.4(88,89B) to 120.6(88,89B) for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and shall also include the following:

*a.* A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and

*b.* The methods the employer will use to inform employees of the hazards of nonroutine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their areas.

**120.3(2)** Multiemployer workplaces. Employers who produce, use, or store hazardous chemicals at a workplace in a way that the employees of other employer(s) may be exposed (for example, employees of a construction contractor working on-site) shall additionally ensure that the hazard communication programs developed and implemented under this rule include the following:

*a.* The methods the employer will use to provide the other employer(s) with a copy of the material safety data sheet, or to make it available at a central location in the workplace, for each hazardous chemical the other employer(s)' employees may be exposed to while working;

*b.* The methods the employer will use to inform the other employer(s) of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies; and

*c.* The methods the employer will use to inform the other employer(s) of the labeling system used in the workplace.

**120.3(3)** The employer may rely on an existing hazard communication program to comply with these requirements, provided that it meets the criteria established in rule 120.3(88,89B).

**120.3(4)** The employer shall make the written hazard communication program available, upon request, to employees, their designated representatives and the commissioner during working hours, in accordance with the requirements of rule 347—10.20(88), specifically 29 CFR 1910.20(e).

**347—120.4(88,89B) Labels and other forms of warning.** Procedures for labels and other forms of warnings are at 347—110.4(88,89B).

**120.4(1)** Except as provided in subrules 120.4(2) and 120.4(3), the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged, or marked with the following information:

- a. Identity of the hazardous chemical(s) contained therein, and
- b. Appropriate hazard warnings.

**120.4(2)** The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by subrule 120.4(1) to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift.

**120.4(3)** The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer.

**120.4(4)** The employer shall not remove or deface existing labels on incoming containers of hazardous chemicals, unless the container is immediately marked with the required information.

**120.4(5)** The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.

**347—120.5(88,89B) Material safety data sheets procedures are at 347—110.5(88,89B).**

**120.5(1)** Employers shall have a material safety data sheet for each hazardous chemical which they use.

**120.5(2)** The employer shall maintain copies of the required material safety data sheets for each hazardous chemical in the workplace, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s).

**120.5(3)** Where employees must travel between workplaces during a work shift, i.e., their work is carried out at more than one geographic location, the material safety data sheets may be kept at a central location at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.

**120.5(4)** Material safety data sheets may be kept in any form, including operating procedures, and may be designed to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process rather than individual hazardous chemicals.

However, the employer shall ensure that in all cases the required information is provided for each hazardous chemical, and is readily accessible during each work shift to employees when they are in their work area(s).

**120.5(5)** Material safety data sheets shall also be made readily available, upon request, to designated representatives, and to the commissioner, in accordance with the requirements of rule 347—10.20(88), specifically 29 CFR 1910.20(e).

**347—120.6(88,89B) Employee information and training.** Employers shall provide employees with information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new hazard is introduced into their work area.

**120.6(1) Information.** Employees shall be informed of:

- a. The requirements of 347—Chapters 110 and 120;
- b. Any operations in their work area where hazardous chemicals are present; and
- c. The location and availability of the written hazard communication program, including the required list(s) of hazardous chemicals, and material safety data sheets required by this chapter.

**120.6(2) Training.** Employee training shall include at least:

- a. Methods and observations that may be used to detect the presence or release of hazardous chemicals in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
- b. The physical and health hazards of the chemicals in the work area;
- c. The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, personal protective equipment to be used and a description of any biological monitoring program (such as blood leads); and
- d. The details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

**120.6(3) *Training format.*** The employer may present the training program to the employee in any format; however, the employer shall preserve a written summary and synopsis of the training, a cassette tape recording of an oral presentation, or a video tape recording of an audio video presentation of the training relied upon by the employer for compliance with subrule 120.6(2), and shall allow employees and their designated representatives access to the written synopsis, tape recording, or video tape recording.

**120.6(4) *Review by the division.*** The training program shall be available for review and approval upon inspection by the division. Upon request by the commissioner, the employer shall make available the written synopsis, cassette tape recording, or video tape recording used or prepared by the employer. The commissioner may conduct an inspection to review an actual training program or review the employer's records of a training program.

**347—120.7** Reserved.

**347—120.8(88,89B) *Discrimination.*** Iowa Code section 89B.9 provides that the employer shall not discharge or in any other manner discriminate against an employee because the employee has filed a complaint, brought an action under the Act, or has cooperated in bringing an action against an employer.

**120.8(1) *Complaint procedure.*** An employee shall file a written complaint to the division setting forth the alleged violation of Iowa Code section 89B.9 within 30 days of the alleged violation.

**120.8(2) *Unprotected activity—employer action predicated on nondiscriminatory grounds.*** Actions taken by an employer or others which adversely affect an employee may be predicated upon nondiscriminating grounds. An employee's engagement in activities protected by the Act does not automatically render an employee free from discharge or discipline for legitimate reasons or from adverse actions dictated by nonprohibitive considerations. The protection only applies when an adverse action occurs because the employee has engaged in a protected activity.

**120.8(3) *Substantial reason standard.*** To establish a violation of Iowa Code section 89B.9, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If the protected activity was a substantial reason for the action or if a discharge or other adverse action had not taken place "but for" engagement in protected activity, Iowa Code section 89B.9 had been violated. Ultimately the issues as to whether a discharge was because of protected activity will be determined on the basis of the facts of the particular case.

**120.8(4) *Procedure.*** Upon receipt of a written complaint, the commissioner shall commence an investigation to determine whether the provisions of Iowa Code section 89B.9 have been violated. If the commissioner determines a violation has occurred, the commissioner shall bring an action in the appropriate district court against the employer.

**347—120.9(88,89B) *Conduct of inspections.***

**120.9(1) *Inspection of records.*** In addition to rule 347—3.5(88), compliance safety and health officers shall have the authority to examine material safety data sheets, hazard communication program, hazard chemical lists submitted to the fire department, and information in sufficient specificity furnished to fire departments. However, noncompliance with the provisions of 347—Chapter 130, community

right to know, and 347—Chapter 140, emergency response right to know, of the Act, shall not be grounds for the compliance safety and health officer to issue an IOSH citation.

**120.9(2) *Trade secrets, exemption and procedure.*** When at the commencement of an inspection, the employer identifies a hazardous chemical or mixture as a trade secret, the compliance safety and health officer shall label all information obtained in such areas which could reveal the trade secret, including all negatives and prints or photographs, and specific chemical identity as “confidential-trade/government secrets” and shall not disclose the chemical identity except in accordance with the provisions of Iowa Code section 88.12. The employer shall have the burden of proof to demonstrate to the compliance safety and health officer that the hazardous chemical can be qualified as a trade secret and meet all criteria for trade secrets set forth in rule 347—110.6(88,89B).

**120.9(3) *Confidentiality preserved.*** In the event that a compliance safety and health officer finds that a hazardous chemical or mixture does not qualify as a trade secret, the officer shall preserve the confidentiality of its identity until the employer has exhausted the administrative remedies and has either failed to file a timely appeal or has failed to prevail upon a trade secret determination as a final agency action under Iowa Code chapter 17A.

**347—120.10(88,89B) Trade secret, medical emergency.** In the event that a trade secret is involved in an employee exposure to a hazardous chemical that results in a medical emergency, the commissioner may issue a subpoena to obtain the identity of a chemical and the most recent update of the MSDS when the immediate release of such information is necessary for emergency medical treatment. The subpoena shall be issued to the chemical manufacturer, importer, or employer upon notice to the commissioner from the attending physician (or other authorized personnel) that a request for this information has been denied and a medical emergency does exist in accordance with 347—subrule 110.6(2).

**347—120.11(88,89B) General procedures for citation, penalties, and appeal.** In the event that an investigation reveals a violation of this chapter, the commissioner shall issue a citation in accordance with Iowa Code section 88.7 and follow the procedure for enforcement of Iowa Code section 88.8. The appeal board may assess penalties pursuant to Iowa Code section 88.14.

**347—120.12** Rescinded, IAB 6/15/88, effective 8/15/88.

These rules are intended to implement Iowa Code sections 89B.8 to 89B.10.

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